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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

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Title	Agenda Item Type
Court Technology: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Cal. Rules of Court, rules 8.70–8.80	July 1, 2010
Recommended by	Date of Report
Court Technology Advisory Committee Hon. Ming W. Chin, Chair	April 5, 2010
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### **Executive Summary**

The Court Technology Advisory Committee (CTAC) recommends adopting rules for an electronic filing pilot program in the Court of Appeal, Second Appellate District. Currently, there are rules regarding electronic filing and service in the trial courts but no rules for the appellate courts. The Court of Appeal, Second Appellate District would like to establish a pilot program to test the use of electronic filing and service in that court. This proposal would establish the rules for such a pilot program.

### **Recommendation**

CTAC recommends that the Judicial Council, effective July 1, 2010, adopt California Rules of Court, rules 8.70–8.80 to govern filing and service by electronic means in the Court of Appeal, Second Appellate District.

The text of the proposed rules is attached at pages 8–19.

## **Previous Council Action**

Although the Judicial Council has not taken any previous action with respect to electronic filing in the appellate courts, it has taken action with respect to electronic filing in the trial courts. In 1999, the Judicial Council sponsored legislation to authorize electronic filing (e-filing) and electronic service (e-service) of documents in the trial courts.<sup>1</sup> Code of Civil Procedure section 1010.6, enacted as part of this council-sponsored legislation, includes provisions addressing e-filing of documents that must be signed and authorizing courts to order that all parties e-file “in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court’s order does not cause undue hardship or significant prejudice to any party in the action.” Section 1010.6(b) directed the council, by 2003, to adopt uniform rules for the e-filing and e-service of documents in the trial courts that are consistent with this statute. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for e-filing and e-service of documents in the trial courts.<sup>2</sup> The trial court e-filing rules address, among other things, what documents can be e-filed, when the trial court can order e-filing, contracts with e-filing service providers, the responsibilities of the court and of e-filers, actions by the court on receipt of electronic filings, and e-service of documents.

## **Rationale for Recommendation**

The Court of Appeal, Second Appellate District (Second District) would like to establish a pilot program to test the use of e-filing and service in that court. Among other things, the Second District would like to be able to work with the superior courts, in particular the Superior Court of Ventura County, in which deployment of the California Case Management System is planned, to test that system’s capabilities in terms of compiling and transmitting clerk’s transcripts in electronic format. Currently no statutes or rules address e-filing or service in the appellate courts. In addition, there are currently requirements in the California Rules of Court regarding the number and format of documents filed in the appellate courts that are not compatible with e-filing.

The proposed rules would give the Second District the authority to conduct its e-filing pilot program. To ensure appropriate consistency between the e-filing and service procedures in the trial and appellate courts, the proposed rules are modeled on and generally incorporate the same language used in the trial court e-filing rules. Like the trial court e-filing rules, among other things, these proposed pilot program rules:

- Provide that the court may permit e-filing of documents unless other legal authority expressly prohibits e-filing and that a document e-filed under these rules has the same legal effect as a document in paper form (rule 8.72);
- Address when the court can order e-filing and e-service (rule 8.73),

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<sup>1</sup> Senate Bill 367 (Dunn), which was enacted as chapter 514, Statutes of 1999.

<sup>2</sup> These rules were originally adopted as rules 2050–2060 and were renumbered as rules 2.250–2.261 effective January 1, 2007, as part of the overall reorganization of the California Rules of Court.

- Establish the responsibilities of the court, including requiring the court to publish its e-filing requirements when it permits e-filing (rule 8.74);
- Permit the court to contract with one or more electronic filing service providers (EFSPs) to furnish an electronic filing system for the court and to provide in that contract that the EFSPs may charge a reasonable fee in addition to the court’s filing fee (rule 8.75);
- Establish the responsibilities of e-filers, including complying with all requirements relating to e-filing and furnishing the court with an electronic addresses at which the e-filer agrees to accept service (rule 8.76(a));
- Provide that if a document is e-filed under these rules and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the pilot program rules prevail (rule 8.76(b));
- Address the e-filing of documents that must be signed (rule 8.77);
- Establish what the court must do when it receives a document electronically, including sending the e-filer confirmation of the court’s receipt of the document and either confirmation that the document has been filed or notice that the document has not been filed (rule 8.79); and
- Authorize the court and parties to e-serve documents under specified circumstances (rule 8.80).

The proposed rules have been adjusted to reflect differences between procedures in the trial and appellate courts. For example, rule 8.71(1), which defines “document” for purposes of these rules, clarifies that the proposed rules cover not only documents filed by litigants, as the trial court rules do, but also documents transmitted to the Court of Appeal by the trial court. In addition, the examples of documents given in rule 8.71(1) are documents that would be found in an appellate, rather than a trial court, proceeding. The proposed rules do not include a provision like that found in rule 2.252 regarding the filing of “original documents,” because, unlike in the trial court, original wills, leases, and other documents are not filed in the appellate court. References to statutes and rules that apply only in the trial courts have also been deleted or replaced with references to provisions applicable to the appellate courts (see, for example, proposed rule 8.78).

In addition, the provisions that address the e-filing of documents that must be signed under penalty of perjury are different from those in the trial court rules. The procedures for e-filing such documents in the trial court are established by Code of Civil Procedure section 1010.6 and provide that the original, signed document is to be maintained by the e-filer. As indicated above, this statute does not apply to the appellate courts. To avoid any question about whether those procedures could be applied in an appellate court absent such a statutory authorization, proposed rule 8.77(a) instead requires parties to file the original, signed verification page of any document that must be signed under penalty of perjury within 5 days after they e-file the document.

Finally, the proposed pilot program rules would give the Second District broader authority to order e-filing or service than is provided under the trial court rules. Consistent with Code of Civil Procedure section 1010.6, rule 2.253 provides that a trial court can order e-filing or service in

any class action, a consolidated action, a group of actions, a coordinated action, or an action that is deemed complex under rule 3.403, after finding that the order would not cause undue hardship or significant prejudice to any party. Since section 1010.6 does not apply to the appellate courts, proposed rule 8.73 would not limit the Court of Appeal's authority to order electronic filing or service to these types of cases but would authorize the Court of Appeal to make such an order if it would not cause undue hardship or significant prejudice to any party. This broader scope will permit the appellate e-filing pilot program to be more encompassing and flexible.

It is anticipated that, on or before the time a statewide computerized case management system with e-filing capabilities is deployed in the trial courts, the pilot program will be reviewed to determine whether these rules should be modified, made permanent, or recommended for statewide application.

### **Comments, Alternatives Considered, and Policy Implications**

A preliminary draft of the proposed pilot program rules was reviewed by the Judicial Council's Appellate Advisory Committee. CTAC revised the proposed rules in response to that committee's comments before the rules were circulated for public comment. The proposed rules were circulated for formal public comment between December 11, 2009, and January 22, 2010, as part of the regular winter comment cycle. Eleven individuals and organizations submitted comments on this proposal. Five commentators agreed with the proposal, three indicated they agreed with the proposal if modified, and three did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal. These public comments were reviewed by a working group comprised of representatives from CTAC, the Appellate Advisory Committee, and the Administrative Presiding Justices Advisory Committee. The recommendations of this working group concerning these comments were then reviewed by CTAC. The full text of the comments received and CTAC's responses are set out in the attached comment chart at pages 20–49, and the significant substantive comments are discussed below.

#### **Deadline for e-filing**

As circulated for public comment, the proposed pilot program rules, like the current trial court e-filing rules, provided that the time at which the court stops accepting hard copies of documents for filing at its filing counter is also the deadline for e-filing documents with the court. Four commentators recommended changing the deadline for e-filing under the proposed pilot program rules to 11:59 p.m. Based on these comments, CTAC has revised its proposal to provide that documents e-filed by 11:59 p.m. on the day that they are due will be considered timely filed.

In the trial court, the congruence in the deadlines for e-filing and the filing of paper documents is required by statute. Code of Civil Procedure section 1010.6(a)(3) provides:

Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier.

It is CTAC's understanding that the policy reason for this statutory provision is to ensure that trial court litigants who are not able to take advantage of e-filing, particularly self-represented litigants who may not have access to computers, are not disadvantaged relative to those who are able to e-file their documents. By its terms, this statute does not apply to the Courts of Appeal and CTAC concluded that the policy reason underlying the statute is also not likely to apply in the Second District pilot program setting. The Second District does not intend to order e-filing in cases involving self-represented litigants under these pilot program rules, and CTAC has revised proposed rule 8.73 to make this clear.<sup>3</sup> In addition, the appellate rules, unlike the trial court rules, already permit certain documents to be submitted for filing after the filing counter in the court has closed. Rule 8.25 provides that certain documents that are filed using overnight carriers or priority mail are considered timely if the time to file them has not expired on the date they are submitted to the overnight carrier or mailed. Under rule 8.25, such a document may be submitted to the overnight carrier or mailed well after the court filing counter has closed and still be considered timely filed. Thus, it would not be inconsistent with current appellate rules or practices to consider as timely a document that is e-filed after the filing counter has closed. CTAC also concluded that, as suggested by the commentators, providing a later deadline for electronically filed documents might create an incentive for parties to use electronic filing. However, making this change will mean that the procedures in the pilot program will be substantively different from those in the trial court rule.

### **Court-ordered e-filing**

As noted above, the proposed pilot program rules would give the Second District broad authority to order e-filing or service if it would not cause undue hardship or significant prejudice to any party. Several commentators recommended adding procedures for parties to receive notice about, and object to, an order requiring them to e-file and/or serve documents. Based on these comments, CTAC revised proposed rule 8.73 to include procedures for notifying the parties and giving them an opportunity to object if the court proposes to order e-filing or service on its own motion (see proposed rule 8.73(a)(2)).

Two commentators also raised concerns about whether public entities or parties in criminal cases would be required to pay fees to an electronic filing service provider under these rules. To address these concerns, CTAC revised proposed rule 8.73 to provide that the court will not order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion for an e-filing order. This amendment is intended to ensure that parties, including public entities and parties in criminal cases, are not inappropriately burdened by having to pay a fee for e-filing but can also take advantage of e-filing when it would be less costly than preparing and mailing or delivering hard copies of documents for filing.

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<sup>3</sup> Note that this provision would not prevent the court from allowing self-represented litigants to voluntarily participate in e-filing or e-service.

These changes will create further differences between these pilot program rules and the trial court e-filing rules, but CTAC concluded that this was warranted given that the pilot program rules contain broader authority to order e-filing.

### **Required service of documents on nonparties**

Under rules 8.29, 8.212, and 8.360 and certain statutes, copies of appellate briefs, petitions, or other appellate documents must be served on certain nonparties. For example, under rule 8.29, a copy of any brief or petition that questions the constitutionality of a state statute must be served on the Attorney General. Under both rules 8.212, relating to briefs in civil appeals, and 8.360, relating to briefs in felony appeals, one copy of each brief must be served on the superior court clerk for delivery to the trial judge. Rule 8.360 also requires that the People serve one copy of all its briefs in felony appeals on the district appellate project. The Committee on Appellate Courts of the State Bar of California questioned how these requirements for service of copies on such nonparties are to be implemented under the electronic service rule. In response to this comment, CTAC revised proposed rule 8.80 to specify that a document may not be electronically served on a nonparty unless otherwise provided by law or court order.

### **Other comments to be considered in conjunction with trial court rules**

The remainder of the public comments on the proposed pilot program rules relate to language that also appears in the current trial court e-filing rules, and many also suggest changes that are beyond the scope of the proposal that was circulated for public comment. CTAC concluded that, rather than considering changes to the proposed pilot program rules in isolation, in the interest of maintaining a consistent approach to e-filing and e-service, it would be best to develop a single set of recommendations for appropriate changes to both the trial court e-filing rules and the Second District pilot program rules. CTAC has recommended circulating this spring proposed changes in both the trial court e-filing rules and the proposed pilot program rules to address some of these comments.<sup>4</sup> If these changes are ultimately adopted by the council, they would take effect January 1, 2011. This would mean that the pilot program rules will be amended fairly quickly after their adoption. To avoid this, the committee considered delaying the recommended adoption of the proposed pilot program rules until after CTAC could review the additional suggestions and a proposal reflecting the changes it recommends could be circulated for public comment. Because the Second District would like to implement its pilot program as soon as possible, the committee ultimately concluded that it would be preferable not to delay the recommended adoption of the proposed rules.

### **Implementation Requirements, Costs, and Operational Impacts**

The Second District will assume some costs associated with implementing an e-filing pilot program, including costs for developing local procedures and systems for accepting and filing

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<sup>4</sup> If approved by the council's Rules and Projects Committee, this proposal would be circulated for comment shortly after the pilot program rules are considered for adoption by the council. This amendment contained in this proposed invitation to comment do not address all of the suggestions made in the public comments on the pilot program rules; the remainder of these comments will be considered by CTAC during a later rules cycle.

documents that are received electronically. However, these proposed rules do not impose these costs on the Second District; the rules simply establish the framework for a pilot program that the Second District would like to implement.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Because this proposal would facilitate increased availability of electronic filing in the Second District, it supports the policies of promoting innovative and effective practices for processing cases and ensuring that statewide rules promote the fair, timely, effective, and efficient processing of cases underlying Goal III, Modernization of Management and Administration (Goal IIIB, Policies 1 and 2).

### **Attachments**

1. Cal. Rules of Court, rules 8.70–8.80, at pages 8–19
2. Chart of comments, at pages 20–49

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79, and 8.80 of the California Rules of Court are adopted, effective July 1, 2010, to read:

1  
2 **Title 8. Appellate Rules**  
3

4 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**  
5

6 **Chapter 1. General Provisions**  
7

8 **Article 4. E-filing Pilot Project in Second Appellate District**  
9

10 **Rule 8.70. Purpose, application, and construction**  
11

12 **(a) Purpose**  
13

14 The purpose of the rules in this article is to facilitate the implementation and testing  
15 of an e-filing project in the Court of Appeal, Second Appellate District.  
16

17 **(b) Application**  
18

19 Notwithstanding any other rules to the contrary, the rules in this article govern filing  
20 and service by electronic means in the Court of Appeal, Second Appellate District.  
21

22 **(c) Construction**  
23

24 The rules in this article must be construed to authorize and permit filing and service  
25 by electronic means to the extent feasible.  
26  
27

28 **Rule 8.71. Definitions**  
29

30 As used in this article, unless the context otherwise requires:  
31

32 (1) “The court” is the Court of Appeal, Second Appellate District;  
33

34 (2) A document may be in paper or electronic form. A “document” is:  
35

36 (A) Any filing submitted to the reviewing court, including a brief, a petition, an  
37 appendix, or a motion;  
38

39 (B) Any document transmitted by a trial court to the reviewing court, including a  
40 notice or a clerk’s or reporter’s transcript; or

1  
2 (C) Any writing prepared by the reviewing court, including an opinion, an order,  
3 or a notice.

4  
5 (3) An “electronic filer” is a party filing a document in electronic form directly with the  
6 court, by an agent, or through an electronic filing service provider.

7  
8 (4) “Electronic filing” is the electronic transmission of a document in electronic form to  
9 a court.

10  
11 (5) An “electronic filing service provider” is a person or entity that receives an  
12 electronic filing from a party for retransmission to the court. In submission of  
13 filings, the electronic filing service provider does so on behalf of the electronic filer  
14 and not as an agent of the court.

15  
16 (6) “Electronic service” is the electronic transmission of a document to a party’s  
17 electronic notification address, either directly or through an electronic filing service  
18 provider, for the purpose of effecting service.

19  
20 (7) “Electronic notification address” of a party means the electronic address at or  
21 through which the party has authorized electronic service.

22  
23  
24 **Rule 8.72. Documents that may be filed electronically**

25  
26 **(a) In general**

27  
28 The court may permit electronic filing of a document by a party or trial court in any  
29 appeal or original proceeding unless the rules in this article or other legal authority  
30 expressly prohibit electronic filing.

31  
32 **(b) Application for waiver of court fees and costs**

33  
34 The court may permit electronic filing of an application for waiver of court fees and  
35 costs in any proceeding in which the court accepts electronic filings.

36  
37 **(c) Orders, opinions, and notices**

38  
39 The court may electronically file any notice, order, opinion, or other document  
40 prepared by the court.

1 **(d) Effect of document filed electronically**

2  
3 (1) A document that the court, a party, or a trial court files electronically under the  
4 rules in this article has the same legal effect as a document in paper form.

5  
6 (2) Filing a document electronically does not alter any filing deadline.  
7

8  
9 **Rule 8.73. Court order requiring electronic service or filing**

10  
11 **(a) Court order**

12  
13 (1) The court may, on the motion of any party or on its own motion, after finding  
14 that such an order would not cause undue hardship or significant prejudice to  
15 any party, order all parties to:

16  
17 (A) Serve all documents electronically, except when personal service is  
18 required by statute or rule;

19  
20 (B) File all documents electronically; or

21  
22 (C) Serve and file all documents electronically, except when personal service  
23 is required by statute or rule.

24  
25 (2) The court will not:

26  
27 (A) Order a self-represented party to electronically serve or file documents;

28  
29 (B) Order a party to electronically serve or file documents if the party would  
30 be required to pay a fee to an electronic filing service provider to file or  
31 serve the documents and the party objects to paying this fee in its  
32 opposition to the motion under (1); or

33  
34 (C) Order a trial court to electronically serve or file documents.

35  
36 (3) If the reviewing court proposes to make an order under (1) on its own motion,  
37 the court must mail notice to the parties. Any party may serve and file an  
38 opposition within 10 days after the notice is mailed or as the court specifies.  
39

1 **(b) Additional provisions of order**

2  
3 The court's order may also provide that documents previously filed in paper form  
4 may be resubmitted in electronic form.

5  
6 **(c) Filing in paper form**

7  
8 When it is not feasible for a party to convert a document to electronic form by  
9 scanning, imaging, or another means, the court may allow that party to serve, file,  
10 or serve and file the document in paper form.

11  
12  
13 **Rule 8.74. Responsibilities of court**

14  
15 **(a) Publication of electronic filing requirements**

16  
17 When the court permits electronic filing it will publish, in both electronic and print  
18 formats, the court's electronic filing requirements.

19  
20 **(b) Problems with electronic filing**

21  
22 If the court is aware of a problem that impedes or precludes electronic filing, it must  
23 promptly take reasonable steps to provide notice of the problem.

24  
25  
26 **Rule 8.75. Contracts with electronic filing service providers**

27  
28 **(a) Right to contract**

29  
30 (1) The court may contract with one or more electronic filing service providers to  
31 furnish and maintain an electronic filing system for the court.

32  
33 (2) If the court contracts with an electronic filing service provider, the court may  
34 require electronic filers to transmit the documents to the provider.

35  
36 (3) If there is a single provider or an in-house system, the court must accept filing  
37 from other electronic filing service providers to the extent it is compatible  
38 with them.

39  
40 **(b) Provisions of contract**

41  
42 The court's contract with an electronic filing service provider may allow the  
43 provider to charge electronic filers a reasonable fee in addition to the court's filing

1 fee. The contract may also allow the electronic filing service provider to make other  
2 reasonable requirements for use of the electronic filing system.

3  
4 **(c) Transmission of filing to court**

5  
6 An electronic filing service provider must promptly transmit any electronic filing  
7 and the applicable filing fee to the court.

8  
9 **(d) Confirmation of receipt and filing of document**

10  
11 (1) An electronic filing service provider must promptly send to an electronic filer  
12 its confirmation of the receipt of any document that the filer has transmitted to  
13 the provider for filing with the court.

14  
15 (2) The electronic filing service provider must send its confirmation to the filer's  
16 electronic notification address and must indicate the date and time of receipt,  
17 in accordance with rule 8.79(a).

18  
19 (3) After reviewing the documents, the court must promptly transmit to the  
20 electronic filing service provider and the electronic filer the court's  
21 confirmation of filing or notice of rejection of filing, in accordance with rule  
22 8.79.

23  
24 **(e) Ownership of information**

25  
26 All contracts between the court and electronic filing service providers must  
27 acknowledge that the court is the owner of the contents of the filing system and has  
28 the exclusive right to control the system's use.

29  
30  
31 **Rule 8.76. Responsibilities of electronic filer**

32  
33 **(a) Conditions of filing**

34  
35 Each electronic filer agrees to, and must:

36  
37 (1) Comply with any court requirements designed to ensure the integrity of  
38 electronic filing and to protect sensitive personal information;

39  
40 (2) Furnish information that the court requires for case processing;

41

- 1           (3) Take all reasonable steps to ensure that the filing does not contain computer  
2           code, including viruses, that might be harmful to the court’s electronic filing  
3           system and to other users of that system;  
4  
5           (4) Furnish one or more electronic notification addresses, in the manner specified  
6           by the court, at which the electronic filer agrees to accept service; and  
7  
8           (5) Immediately provide the court and all parties with any change to the electronic  
9           filer’s electronic notification address.

10  
11 **(b) Format of documents to be filed electronically**

12  
13 A document that is filed electronically with the court must be in a format specified  
14 by the court unless it cannot be created in that format. The format adopted by a  
15 court must meet the following requirements:

- 16  
17 (1) The software for creating and reading documents must be in the public domain  
18 or generally available at a reasonable cost.  
19  
20 (2) The printing of documents must not result in the loss of document text,  
21 format, or appearance.

22  
23 If a document is filed electronically under the rules in this article and cannot be  
24 formatted to be consistent with a formatting rule elsewhere in the California Rules  
25 of Court, the rules in this article prevail.

26  
27  
28 **Rule 8.77. Requirements for signatures on documents**

29  
30 **(a) Documents signed under penalty of perjury**

31  
32 If a document to be filed must be signed under penalty of perjury, the document  
33 may be filed electronically provided that the original, signed verification page or  
34 pages are filed with the court within 5 calendar days.

35  
36 **(b) Documents not signed under penalty of perjury**

37  
38 If a document does not require a signature under penalty of perjury, the document is  
39 deemed signed by the party if the document is filed electronically.  
40  
41

1 **(c) Documents requiring signatures of opposing parties**

2  
3 When a document to be filed electronically, such as a stipulation, requires the  
4 signatures of opposing parties, the following procedure applies:

- 5  
6 (1) The party filing the document must obtain the signatures of all parties on a  
7 printed form of the document. By electronically filing the document, the  
8 electronic filer indicates that all parties have signed the document and that the  
9 filer has the signed original in his or her possession
- 10  
11 (2) The party filing the document must maintain the original, signed document  
12 and must make it available for inspection and copying at the request of the  
13 court or any other party.
- 14  
15 (3) At any time after the document is filed, any other party may serve a demand  
16 for production of the original signed document. The demand must be served  
17 on all other parties but need not be filed with the court.
- 18  
19 (4) Within five days of service of the demand under (3), the party on whom the  
20 demand is made must make the original signed document available for  
21 inspection and copying by all other parties.
- 22  
23 (5) At any time after the document is filed, the court may order the filing party to  
24 produce the original signed document in court for inspection and copying by  
25 the court. The order must specify the date, time, and place for the production  
26 and must be served on all parties.

27  
28 **(d) Digital signature**

29  
30 A party is not required to use a digital signature on an electronically filed document.

31  
32 **(e) Judicial signatures**

33  
34 If a document requires a signature by a court or a judicial officer, the document may  
35 be electronically signed in any manner permitted by law.

36  
37  
38 **Rule 8.78. Payment of filing fees**

39  
40 **(a) Use of credit cards and other methods**

41  
42 The court may permit the use of credit cards, debit cards, electronic fund transfers,  
43 or debit accounts for the payment of filing fees associated with electronic filing, as

1 provided in Government Code section 6159 and other applicable law. The court  
2 may also authorize other methods of payment.

3  
4 **(b) Fee waivers**

5  
6 Eligible persons may seek a waiver of court fees and costs, as provided in  
7 Government Code section 68634.5 and rule 8.26.

8  
9 **Advisory Committee Comment**

10  
11 **Subdivision (b).** A fee charged by an electronic filing service provider under rule 8.75(b) is not a court  
12 fee that can be waived under Government Code section 68634.5 and rule 8.26.

13  
14  
15 **Rule 8.79. Actions by court on receipt of electronic filing**

16  
17 **(a) Confirmation of receipt and filing of document**

18  
19 **(1) Confirmation of receipt**

20  
21 When the court receives an electronically submitted document, the court must  
22 promptly send the electronic filer confirmation of the court's receipt of the  
23 document, indicating the date and time of receipt. A document is considered  
24 received at the date and time the confirmation of receipt is created.

25  
26 **(2) Confirmation of filing**

27  
28 If the document received by the court under (1) complies with filing  
29 requirements, the court must promptly send the electronic filer confirmation  
30 that the document has been filed. The filing confirmation must indicate the  
31 date and time of filing and is proof that the document was filed on the date and  
32 at the time specified. The filing confirmation must also specify:

33  
34 **(A) Any transaction number associated with the filing;**

35  
36 **(B) The titles of the documents as filed by the court; and**

37  
38 **(C) The fees assessed for the filing.**

39  
40 **(3) Transmission of confirmations**

41  
42 The court must send receipt and filing confirmation to the electronic filer at  
43 the electronic notification address that the filer furnished to the court under

1 rule 8.76(a)(4). The court must maintain a record of all receipt and filing  
2 confirmations.

3  
4 (4) *Filer responsible for verification*

5  
6 In the absence of the court’s confirmation of receipt and filing, there is no  
7 presumption that the court received and filed the document. The electronic  
8 filer is responsible for verifying that the court received and filed any document  
9 that the electronic filer submitted to the court electronically.

10  
11 **(b) Notice of rejection of document for filing**

12  
13 If the clerk does not file a document because it does not comply with applicable  
14 filing requirements, the court must promptly send notice of the rejection of the  
15 document for filing to the electronic filer. The notice must state the reasons that the  
16 document was rejected for filing.

17  
18 **(c) Document filed after close of business**

19  
20 A document that is filed electronically with the court after 11:59 p.m. is deemed to  
21 have been filed on the next court day.

22  
23 **(d) Delayed delivery**

24  
25 If a technical problem with a court’s electronic filing system prevents the court  
26 from accepting an electronic filing on a particular court day, and the electronic filer  
27 demonstrates that he or she attempted to electronically file the document on that  
28 day, the court must deem the document as filed on that day.

29  
30 **(e) Endorsement**

31  
32 (1) The court’s endorsement of a document electronically filed must contain the  
33 following: “Electronically filed by California Court of Appeal, Second  
34 Appellate District, on \_\_\_\_\_ (date),” followed by the name of the court clerk.

35  
36 (2) The endorsement required under (1) has the same force and effect as a  
37 manually affixed endorsement stamp with the signature and initials of the  
38 court clerk.

39  
40 (3) A record on appeal, brief, or petition in an appeal or original proceeding that is  
41 filed and endorsed electronically may be printed and served on the appellant  
42 or respondent in the same manner as if it had been filed in paper form.  
43

1  
2 **Rule 8.80. Electronic service**

3  
4 **(a) Consent to electronic service**

5  
6 (1) When a notice may be served by mail, express mail, overnight delivery, or fax  
7 transmission, electronic service of the notice is permitted when authorized by  
8 these rules.

9  
10 (2) A party indicates that the party agrees to accept electronic service by:

11  
12 (A) Filing and serving a notice that the party accepts electronic service. The  
13 notice must include the electronic notification address at which the party  
14 agrees to accept service; or

15  
16 (B) Electronically filing any document with the court. The act of electronic  
17 filing is evidence that the party agrees to accept service at the electronic  
18 notification address that the party has furnished to the court under rule  
19 8.76(a)(4).

20  
21 (3) A party that has consented to electronic service under (2) and has used an  
22 electronic filing service provider to file and serve documents in a case  
23 consents to service on that electronic filing service provider as the designated  
24 agent for service for the party in the case, until such time as the party  
25 designates a different agent for service.

26  
27 **(b) Maintenance of electronic service lists**

28  
29 When the court permits electronic filing in a case, it must maintain and make  
30 available electronically to the parties an electronic service list that contains the  
31 parties' current electronic notification addresses, as provided by the parties that  
32 have filed electronically in the case.

33  
34 **(c) Service by the parties**

35  
36 (1) Notwithstanding (b), parties are responsible for electronic service on all other  
37 parties in the case. A party may serve documents electronically directly, by an  
38 agent, or through a designated electronic filing service provider.

39  
40 (2) A document may not be electronically served on a nonparty unless otherwise  
41 provided by law or court order.  
42

1 **(d) Change of electronic notification address**

- 2
- 3 (1) A party whose electronic notification address changes while the appeal or  
4 original proceeding is pending must promptly file a notice of change of  
5 address electronically with the court and must serve this notice electronically  
6 on all other parties.
- 7
- 8 (2) A party's election to contract with an electronic filing service provider to  
9 electronically file and serve documents or to receive electronic service of  
10 documents on the party's behalf does not relieve the party of its duties under  
11 (1).
- 12
- 13 (3) An electronic notification address is presumed valid for a party if the party  
14 files electronic documents with the court from that address and has not filed  
15 and served notice that the address is no longer valid.

16

17 **(e) When service is complete**

- 18
- 19 (1) Electronic service is complete at the time of transmission.
- 20
- 21 (2) Service that occurs after 11:59 p.m. is deemed to have occurred on the next  
22 court day.

23

24 **(f) Proof of service**

- 25
- 26 (1) Proof of electronic service may be by any of the methods provided in Code of  
27 Civil Procedure section 1013a, except that the proof of service must state:
- 28
- 29 (A) The electronic notification address of the person making the service, in  
30 addition to that person's residence or business address;
- 31
- 32 (B) The date and time of the electronic service, instead of the date and place  
33 of deposit in the mail;
- 34
- 35 (C) The name and electronic notification address of the person served, in  
36 place of that person's name and address as shown on the envelope; and  
37
- 38 (D) That the document was served electronically, in place of the statement  
39 that the envelope was sealed and deposited in the mail with postage fully  
40 prepaid.
- 41
- 42 (2) Proof of electronic service may be in electronic form and may be filed  
43 electronically with the court.

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12

(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant’s original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(c).

**(g) Electronic service by court**

The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

All comments are verbatim unless indicated by an asterisk (\*).

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	NI	*The Appellate Court Committee of the San Diego County Bar Association appreciates the opportunity to comment on proposed revisions to the California Rules of Court and, in particular, changes to appellate rules.  <i>See comments on specific provisions below.</i>	See responses to comments on specific provisions below.
2.	Jennifer K. Berg Attorney Oakland	A	I support the proposal fully. As a practicing asbestos attorney in San Francisco, the benefits of electronic filing and service are numerous. Electronic filing has resulted in greater efficiency, both internally and with the court (fewer continued hearings due to lost pleadings); cost savings (less printing, travel to the courthouse, postage); has significantly reduced the stress on staff related to filing of documents, and has furthered the State's interest in preserving natural resources, particularly given the State of Emergency declared by the Governor due to the water shortage. While there may be some resistance on the part of some practitioners initially, as was the experience in San Francisco, once attorneys understand how to e-file, there has been almost universal support.  <i>See comments on specific provisions below.</i>	No response required.  See responses to comments on specific provisions below.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	California Court Reporters Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	AM	<i>See comments on specific provisions below.</i>	See responses to comments on specific provisions below.
4.	Committee on Administration of Justice State Bar of California	NI	<p>The State Bar of California’s Committee on Administration of Justice (CAJ) supports in principle electronic filing and service, and looks forward to learning what the proposed Electronic Filing Program for the Second Appellate District will teach us about making an e-filing and e-service system work for all stakeholders. CAJ believes the following clarifications and modifications in the proposed rules will help ensure the pilot program’s value and success.</p> <p><i>See comments on specific provisions below.</i></p> <p><u>Disclaimer</u></p> <p>This position is only that of the State Bar of California’s Committee on Administration of Justice. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	<p>No response required.</p> <p>See responses to comments on specific provisions below.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
5.	Committee on Appellate Courts State Bar of California by T. Peter Pierce Chair	AM	<p>*The Committee supports this proposal with several modifications.</p> <p><i>See comments on specific provisions below.</i></p> <p>Thank you for your consideration of our comments.</p> <p><u>Disclaimer</u></p> <p>This position is only that of the State Bar of California’s Committee on Appellate Courts. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	See responses to comments on specific provisions below.
6.	GreenPath Software Solutions, LLC Alameda by Marilynn Hall Chief Communications Officer	A	Encourages the courts to accept and initiate electronic filings for all documents. It will save money, save time, and conserve resources.	No response required.
7.	Jay M. Kohorn Assistant Director California Appellate Project Los Angeles	NI	I am the assistant director of the California Appellate Project in Los Angeles. Under California Rules of Court, rule 8.300, we are mandated to oversee the court-appointed counsel system for the Second District Court of Appeal. Hence my interest in the electronic filing pilot program in that district.	

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<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Here are my comments:</p> <p><i>See comments on specific provisions below.</i></p> <p>That's it for now. I hope that the ultimate language of these rules allows for sufficient flexibility so as not to keep the pilot project from being able to test reasonable options. After speaking with Joseph [Lane, Clerk-Administrator of the Court of Appeal, Second Appellate District], I think that is generally the case.</p>	<p>See responses to comments on specific provisions below.</p>
8.	Orange County Bar Association Newport Beach, California by Lei Lei Wang Ekvall President	AM	<i>See comments on specific provisions below.</i>	See responses to comments on specific provisions below.
9.	Michael D. Schwartz Special Assistant District Attorney Office of the District Attorney Ventura	A	<p>I agree with the proposed changes, with the following comments.</p> <p>I favor electronic filing for Court of Appeal documents and hope it will be a step toward public access to court documents via the Internet. I have used the federal courts' PACER (Public Access to Court Electronic Records) system for both District Court and Ninth Circuit cases and find it a very helpful and convenient source of information. Electronic filing and service of documents is also in keeping with</p>	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>modern document storage practices, i.e., keeping electronic copies rather than hard copies.</p> <p><i>See comments on specific provisions below.</i></p> <p>I appreciate the opportunity to comment on this worthwhile proposal.</p>	<p>See responses to comments on specific provisions below.</p>
10.	Superior Court of Los Angeles County	A	<i>See comments on specific provisions below.</i>	See responses to comments on specific provisions below.
11.	Superior Court of San Diego County by Michael M. Roddy Court Executive Officer	A	No specific comment.	No response required.

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Deadline for e-filing documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair</p>	<p>One issue that generated significant discussion among our members is the deadline for e-filing that should be in place under the pilot program - meaning the time of day a document may be filed and considered timely. We suggest utilizing the same requirements imposed under the federal courts' Case Management/Electronic Case Files (CM/ECF) system. The federal CM/ECF system permits a document filed and served via that system on or before 11:59 p.m. (in the relevant court's time zone) to count as filed and/or served on that day. For example, Ninth Circuit Rule 25-5(c)(2) provides: "Timeliness. An electronic filing successfully completed by 11:59 p.m. Pacific Time will be entered on the Court's docket as of that date. The Court's Appellate ECF system determines the date and time a filing is completed. If technical failure prevents timely electronic filing of any document, the filing party shall preserve documentation of the failure and seek appropriate relief from the court."(Copy attached as exhibit A to this letter.)</p> <p>In addition to providing consistency with the widely-used federal CM/ECF system, using the 11:59 p.m. deadline may alleviate some congestion of voluminous electronic filings at the close of the business day, in the late afternoon as presently proposed. Although not guaranteed, filings are more likely to be more staggered over time if the deadline to file is 11:59 p.m. If adopted, we note that this revision would implicate and require revision of the following proposed rules:</p> <ul style="list-style-type: none"> <li>• proposed rule 8.71(1), which defines "Close of business";</li> </ul>	<p>Based on this and other comments, the committee has modified the proposal to allow documents to be e-filed until 11:59 p.m. on the date that they are due.</p>

**W10-04**

**Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Deadline for e-filing documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"> <li>• proposed rule 8.71(7), which defines “Regular filing hours”;</li> <li>• proposed rule 8.74(c), which provides that “If the court is aware of a problem that impedes or precludes electronic filing during the court’s regular filing hours, it must promptly take reasonable steps to provide notice of the problem.”;</li> <li>• proposed rule 8.79( c), which provides that “A document that is filed electronically with the court after the close of business is deemed to have been filed on the next court day.”;</li> <li>• proposed Rule 8.79(d), which provides that “If a technical problem with a court’s electronic filing system prevents the court from accepting an electronic filing during its regular filing hours on a particular day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.”; and</li> <li>• proposed Rule 8.80(e)(2), setting forth when electronic “service” is complete.</li> </ul>	
Committee on Administration of Justice State Bar of California	<p><b>Rule 8.71 - Definitions</b></p> <p>Subdivision (1) defines the “close of business,” which is a phrase scattered throughout the pilot program’s proposed rules. The proposal defines the close of business as the time the filing counter at the Second District closes for the day. CAJ sees no compelling reason to restrict a party’s use of an e-filing and e-service system to the court’s regular business hours. CAJ suggests that service and filing of documents up to 11:59 p.m. count as service and filing on that day.</p>	Based on this and other comments, the committee has modified the proposal to allow documents to be e-filed until 11:59 p.m. on the date that they are due.

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<b>Deadline for e-filing documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Permitting service and filing until 11:59 p.m. is consistent with the practice in the federal courts. Moreover, extending service and filing into the evening avoids overtaxing an electronic transmission system with a “4:30 p.m. rush” (the time the filing counter closes in the Second Appellate District).</p>	
<p>Committee on Appellate Courts State Bar of California by T. Peter Pierce</p>	<p><b>11:59 p.m. E-Filing and Service Cutoff:</b> The Committee strongly recommends that the electronic filing and service cutoff be 11:59 p.m. instead of “close of business.” Therefore, the Committee recommends the following changes:</p> <ul style="list-style-type: none"> <li>• Delete rule 8.71(1) (W10-04 [page:lines] 3:31-34)</li> <li>• Delete rule 8.71(7) (4:16-17)</li> <li>• In rule 8.74(c), delete “during the court’s regular filing hours” (6:10-14)</li> <li>• In rule 8.79(c), replace “close of business” (title) and “the close of business” (text) with “11:59 p.m.” (11:4-7)</li> <li>• In rule 8.79(d), delete “during its regular filing hours” (11:9-15)</li> <li>• In rule 8.80(e)(2), replace “the close of business” with “11:59 p.m.” (13:1-2)</li> <li>• In rule 8.80(f)(1)(B), delete “and time” (13:12-13)</li> </ul> <p>A cutoff of 11:59 p.m. would avoid potentially debilitating peak demands on the electronic filing system at the “close of business.” Otherwise, there is likely to be a crush of electronic traffic at the deadline with accompanying problems and parties’ requesting relief because the system</p>	<p>Based on this and other comments, the committee has modified the proposal to allow documents to be e-filed until 11:59 p.m. on the date that they are due.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Deadline for e-filing documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>failed to process filings initiated before the deadline. This is not an insubstantial concern. The Committee notes, for example, uploading difficulties and delays that have been experienced near the 4:00 p.m. deadline for San Francisco asbestos litigation through LexisNexis File &amp; Serve. These difficulties and delays could be compounded by an electronic filing deadline at the close of business for the Second Appellate District (which has roughly one third of the appeals pending in the Court of Appeal districts). Compared with trial court documents, appellate briefs and other filings are often much larger. Appendices in particular will typically involve much larger electronic file sizes. Appendices will likely need to be scanned, and they often involve multiple volumes consisting of several hundred pages each.</p> <p>The Committee perceives no need to require electronic filing and service by the “close of business.” Courts do not need to process filings during nighttime hours, and parties—who currently receive service by mail—will not be prejudiced by not receiving instant electronic delivery by the “close of business.” Further, under existing rule 8.25(b), appellate briefs are timely if shipped to the court by the due date (i.e., by 11:59 p.m. on the due date) provided that the date of mailing by priority or express mail is shown on the postmark or the postal receipt, or the brief is delivered to a common carrier promising overnight delivery as shown on the carrier’s receipt.</p> <p>Thus, regardless of whether the existing trial court rules for electronic filing and service are changed to establish a cutoff</p>	

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Deadline for e-filing documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>of 11:59 p.m., there are particular reasons why 11:59 p.m. should be the cutoff for appellate documents. The Committee also notes that electronic filing in federal courts generally operates effectively and efficiently using a daily cutoff of 11:59 p.m.</p> <p>Proposed rule 8.74(c) would require that the court give notice if a problem impedes electronic filing “during the court’s regular filing hours.” The Committee believes there is no need for this qualification. Proposed rule 8.79(d) provides relief from technical problems that prevent electronic filing during the court’s “regular filing hours.” Again, the Committee believes there is no need for this qualification. Proposed rule 8.71(7) could then be eliminated.</p>	
<p>Jay M. Kohorn Assistant Director California Appellate Project Los Angeles</p>	<p>(4) Rule 8.71 (7) “Regular filing hours.” Again, if this pilot project is to be successful, the timeliness rule should parallel rule 8.25(b)(3) as well as the federal rules for electronic filing, which mandate closure of the timeliness window not at the close the court’s physical offices, but at close of the deadline day, i.e., midnight.</p>	<p>Based on this and other comments, the committee has modified the proposal to allow documents to be e-filed until 11:59 p.m. on the date that they are due.</p>

**W10-04**

**Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Article 4—Title</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	<p>At the threshold, we have one suggestion for the title of the program in the California Rules of Court. To clarify for all readers that e-filing is an option, for now, only in the Second District, we propose adding the following text (our bold italics) to the title:</p> <p style="text-align: center;">Title 8. Appellate Rules 1</p> <p style="text-align: center;">Division 1. Rules Relating to the Supreme Court and Courts of Appeal</p> <p style="text-align: center;">Chapter 1. General Provisions</p> <p style="text-align: center;">Article 4. E-filing Pilot Project <i>in Second District Court of Appeal</i></p> <p>This additional language in the title would also presumably appear in the index to the California Rules of Court, where even more readers would see it. This clarifying text would reduce the possibility of confusion on the pilot program's limited geographic scope.</p>	<p>The committee agrees with this suggestion and has modified its proposal to include this change.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.71(5). Definition of electronic filing service provider**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Committee on Administration of Justice State Bar of California	<p><b>Rule 8.71 - Definitions</b>  <i>“Electronic filing service provider”</i>            Subdivision (5) states an “electronic filing service provider” submits filings on behalf of the party, not as an agent of the Court of Appeal. CAJ notes that if the court mandates use of a single electronic filing service provider, the court, not the party, has chosen the provider. The court’s imposition of a provider on a party, while seeming to disavow responsibility for how that provider discharges its services, strikes CAJ as contrary to sound agency principles. One possible remedy is to permit parties to choose among multiple electronic filing service providers.</p>	<p>The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal. The committee also notes that proposed rule 8.75(a)(3) provides that if the court contracts with a single electronic filing service provider, “the court must accept filing from other electronic filing service providers to the extent it is compatible with them.”</p>
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<p><b>Agency:</b></p> <ul style="list-style-type: none"> <li>Strike from rule 8.71(5) the sentence that reads: “In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.” (4:8-10.)</li> </ul> <p>Where the court contracts with an electronic filing service provider, the party has not truly selected the electronic filing service provider as the party’s agent. Instead, the court has chosen the electronic filing service provider, and the court’s choice is imposed on the parties. This sentence is unnecessary, and it should not be included.</p>	<p>See the response to the comments of the Committee on Administration of Justice, above.</p>

**W10-04**

**Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.73. Court order requiring electronic service or filing</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	<p>The invitation to comment specifically requested input on whether, unless the appellate court orders otherwise, e-filing and e-service should be required in the Second District when they were ordered in the trial court. We have no specific comment on this portion of the proposed rules, except that in those cases the parties or counsel might be more amenable to e-filing and e-service on appeal.</p> <p>The invitation to comment also solicited input on whether the pilot program rules should authorize the court to <i>order</i> e-filing and e-service as proposed, rather than grounding the program on voluntary participation. We offer the following comments and suggestions for the Judicial Council's consideration regarding the proposed rules.</p> <p>Proposed rule 8.73(a) provides that a reviewing court will order e-filing and e-service in a case only after “finding that such an order would not cause undue hardship or significant prejudice to any party.” However, the proposed rules do not presently provide a mechanism for notice and an opportunity to be heard on possible participation in the pilot program. We suggest that the proposed rules include a procedure by which a party may object to e-filing and service in a particular case and be permitted to demonstrate hardship to the court. The proposed rules might also provide express guidance on the factors the court will consider in making the hardship determination.</p> <p>The Judicial Council may intend that litigants simply make an application or motion under rules 8.50 or 8.54 for relief, either before or after an order requiring participation. If so,</p>	<p>Because the public comments did not reflect support for this approach, the committee is not recommending that it be included in the proposal.</p> <p>Based on this and other comments, the committee has revised the proposal to include procedures to provide notice and an opportunity to be heard if the court is considering ordering e-filing or e-service on its own motion.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.73. Court order requiring electronic service or filing</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	an Advisory Committee Comment might be a good place to note that the general procedures governing applications and motions apply to the new e-filing rules.	
Jennifer K. Berg Attorney Oakland	If the court is to institute e-filing, I would propose that it be for all cases, and not just certain categories of cases. Uniformity will reduce confusion.	The committee believes that, particularly during the pilot program, the court should have flexibility in determining the cases in which to try e-filing.
Committee on Administration of Justice State Bar of California	<b>Rule 8.73 – “Court order requiring electronic service or filing”</b> Subdivision (a) of the proposed rule permits the Court of Appeal on its own motion to order e-filing, e-service, or both, in any given matter. CAJ believes the court should issue such an order only after providing notice to the parties, with an opportunity for them to comment. The rule already implies, in CAJ’s view, the existence of a comment period for the court to receive information from the parties about their circumstances under the rule’s “undue hardship or significant prejudice” test. CAJ believes the rule should make that implied notice and comment period explicit.	Based on this and other comments, the committee has revised the proposal to include procedures that provide notice and an opportunity to be heard if the court is considering ordering e-filing or e-service on its own motion.
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<b>Procedure for Requiring E-Filing and E-Service:</b> <ul style="list-style-type: none"> <li>In rule 8.73(a), after “or on its own motion” (and before the succeeding comma) insert “with notice and an opportunity to object” (5:13-15)</li> </ul> <p>If the court is going to make a genuine determination that requiring electronic filing and service would not cause undue hardship or significant prejudice, a party should have</p>	Based on this and other comments, the committee has revised the proposal to include procedures to provide notice and an opportunity to be heard if the court is considering ordering e-filing or e-service on its own motion.

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.73. Court order requiring electronic service or filing**

Commentator	Comment	Committee Response
	<p>a ready opportunity to inform or contest that determination. While the present reference to the court’s “own motion” may already imply requirements of notice and the opportunity to object, the proposed modification would make this explicit. Ideally, the court would provide information as to costs and what the requirement means in practice.</p> <p>In response to the question of “[w]hether, unless the appellate court orders otherwise, e-filing and e-service should be required in the appellate court when they were ordered in the trial court,” the Committee’s view is that when e-filing and e-service have been ordered in the trial court, it is reasonable to allow a rebuttable presumption that there would be no undue hardship or significant prejudice. However, the Committee believes the rules should not preclude a party from objecting.</p> <p>The Committee anticipates that eventually, the Second Appellate District might adopt routine procedures for assuming no undue hardship or significant prejudice in broad categories of cases, whereby a notice will be included with notice of docketing the appeal that e-filing and e-service are ordered in the absence of an objection submitted within a specified time (whereby an objection would require a case-specific determination by the court).</p>	<p>Because the public comments did not reflect support for this approach, the committee is not recommending that it be included in the proposal.</p>
<p>Jay M. Kohorn Assistant Director California Appellate Project Los Angeles</p>	<p>(1) “Whether ... [the new] rules should authorize the court to order e-filing and e-service as proposed.”</p> <p>Having participated in and overseen a number of pilot</p>	<p>The committee believes that the ability to order e-filing may be needed to ensure that a sufficient number of cases participate in the pilot program in order to test the e-filing procedures.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.73. Court order requiring electronic service or filing**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>projects involving appellate counsel, my suggestion is that this pilot project should initially be voluntary so that processes are perfected and problems solved using those who feel most comfortable with the new technology.</p> <p>(2) “Whether, unless the appellate court orders otherwise, e-filing and e-service should be required in the appellate court when they were ordered in the trial court.”</p> <p>It may be a mistake to tie the appellate court to the trial court's decision during the initial test period. The appellate court should make its independent decision regarding participation based on factors it considers appropriate.</p>	<p>Because the public comments did not reflect support for this approach, the committee is not recommending that it be included in the proposal.</p>
Superior Court of Los Angeles County	<p>Pursuant to Joseph Lane, Clerk of the 2nd District Court of Appeal, LASC will not be required to submit documents electronically for purposes of this pilot program. Proposed changes will have no adverse impact on the appeals unit of LASC at this time.</p>	<p>To more clearly reflect the court’s intent, the committee has revised the proposal to specify that the court will not order any trial court to e-file documents. Note that this would not prevent the court from allowing trial courts to voluntarily participate in e-filing or e-service under the pilot program.</p>

**Rule 8.74(a). Responsibilities of court—Internet-accessible system**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	<p>With respect to proposed rule 8.74, we suggest defining the term “Internet-accessible system.” This phrase has the ring of a term of art but the meaning is not self-evident, at least to our committee.</p>	<p>Based on this and other comments, the committee has revised the proposal to delete the provision that was 8.74(a) in the proposal that was circulated for public comment.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

All comments are verbatim unless indicated by an asterisk (\*).

<b>Rule 8.74(a). Responsibilities of court—Internet-accessible system</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	In addition, we suggest clarifying the meaning of proposed rule 8.74(a)(2). As presently worded, this subsection is somewhat vague. We read proposed rule 8.74(a)(2) as providing the court with discretion to revoke an e-filing or e-service order or to restrict filings over the Internet in certain circumstances. If this is the intent, we suggest clarifying the language to say so more expressly.	
Committee on Administration of Justice State Bar of California	<b>Rule 8.74 – “Responsibilities of court”</b> Subdivision (a)(1) requires an e-filing system that works “over the Internet.” Subdivision (a)(2) is not entirely clear, but seems to contemplate the possibility of using a non-internet based electronic filing and service method. If that is indeed the intent of this rule – or any other provision of this proposal – CAJ would oppose a system <i>requiring</i> CDs, DVDs, or other similar optical storage media as a non-internet filing or service method. CAJ’s principal objection is the prohibitive expense of creating such discs, particularly if the briefs on those discs must contain hyperlinks to the appellate record and legal authorities.	See response to comments of the Appellate Court Committee of the San Diego County Bar, above.
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<b>Re-wording of Rule 8.74(a)(2):</b> As currently written, proposed rule 8.74(a)(2) provides that: “The court may decide not to permit service and filing over the Internet if the court determines that doing so would facilitate the management of a particular appeal or proceeding and would not cause undue prejudice to any party.” The Committee is uncertain what is meant and therefore suggests that this provision be clarified.	See response to comments of the Appellate Court Committee of the San Diego County Bar, above.

**W10-04**

**Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.75(b). Electronic filing service providers' fees</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Court Reporters Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	<p>Rule 8.75(b), Provisions of contract, allows the provider of the filing service “to charge electronic filers a reasonable fee in addition to the court’s filing fee.”</p> <p>CCRA’s concern is it is not clear in this proposal whether official reporter will be responsible for filing transcripts. It may be envisioned that the local appellate clerk would do the filing but that is not stated in the proposal. It would be yet another financial burden to allow the service provider to charge reporters a fee for filing court-ordered transcripts.</p> <p>CCRA respectfully submits that the proposal should be modified so that it is clear that the court reporter is:</p> <p>2. Not subject to the filing service provider’s addition “reasonable fee;”</p>	<p>Under the existing appellate rules, court reporters are not required to file reporter’s transcripts with the Court of Appeal. Rules 8.130 and 8.336 require court reporters to submit transcripts to the superior court and the superior court to submit them to the Court of Appeal. Because court reporters are not “filers” within the meaning of this proposed rule, these provisions would not apply to them.</p>
Committee on Administration of Justice State Bar of California	<p><b>Rule 8.75 – “Contracts with electronic filing service providers”</b></p> <p>Subdivision (b) permits an electronic filing service provider to charge a “reasonable fee” for the e-filing services it provides to parties. CAJ wishes to reiterate the importance of the Court of Appeal overseeing the reasonableness of such fees to ensure they are not economically burdensome, particularly on indigent parties. The court’s supervisory role will be especially important if the court selects only one provider who will not have competition from other providers to restrain its fees.</p>	<p>To more clearly reflect the court’s intent, the committee has revised the proposal to specify that the court will not order any party to e-file or e-serve documents if the party would be required to pay a fee to an electronic filing service provider and the party objects to paying that fee. The committee also notes that proposed rule 8.75(a)(3) provides that if the court contracts with a single electronic filing service provider, “the court must accept filing from other electronic filing service providers to the extent it is compatible with them.”</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.75(b). Electronic filing service providers' fees</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Orange County Bar Association Newport Beach by Lei Lei Wang Ekvall President	1) Rule 8.75(b) should be amended to clarify that, pursuant to Government code section 6103, public agencies are not required to pay any fees to the electronic filing service provider. Since the payments considered in rule 8.75(b) are not being made to the court itself, such clarification seems necessary to ensure that public offices are not burdened by these costs.	See the response to the comments of the Committee on Administration of Justice, above.
Michael D. Schwartz Special Assistant District Attorney Office of the District Attorney Ventura	I am concerned about proposed rule 8.75(b), which would allow the court's electronic filing service provider to charge a "reasonable fee" to file documents. Currently, no fee is charged in criminal cases, and the mechanics of using a credit card or other payment method by a county agency such as the District Attorney can be problematic. I suggest either deleting the fee for criminal cases, or exempting public entities pursuant to Government Code section 6103.	See the response to the comments of the Committee on Administration of Justice, above.

<b>Rule 8.75(e). Ownership of electronically filed documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Court Reporters Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	Rule 8.75(e) Ownership of information, indicates that the court would be the owner of the contents of the filing system with exclusive right to control. CCRA objects to this provision because it may be in conflict with Government Code section 69954(d) which states, "Any court, party, or person who has purchased a transcript may, without paying	The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.75(e). Ownership of electronically filed documents</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.” We request that this language be modified to clarify that it only applies to the contract between the court and the filing service provider and not to documents contained in the system, or that it specifically does not apply to court reporter transcripts.	proposal.

<b>Rule 8.76. Responsibilities of electronic filer</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<p><b>Agreement:</b></p> <ul style="list-style-type: none"> <li>• Strike from rule 8.76(a) the terms: “agrees to, and” (7:27)</li> </ul> <p>The listed conditions of filing are not something to which a filer actually “agrees”; instead, they are mandated by the rule. The rules of court should not suggest otherwise.</p>	The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.



<b>Rule 8.76(a). Ensuring that the filing does not contain harmful computer code</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Court Reporters	Rule 8.76(a)(3) states each electronic filer must “take all	Under the existing appellate rules, court reporters are

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.76(a). Ensuring that the filing does not contain harmful computer code</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	<p>reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”</p> <p>Once again, the concern is to the potential financial burden of purchasing prophylactic software to protect the court’s filing system from ETVs (Electronically Transmitted Viruses). If the court reporter is not filing directly with the appellate court then this concern becomes moot.</p> <p>CCRA respectfully submits that the proposal should be modified so that it is clear that the court reporter is:</p> <p>3. Not responsible for ensuring “that the filing does not contain computer code, including viruses.”</p>	<p>not required to file reporter’s transcripts with the Court of Appeal. Rules 8.130 and 8.336 require court reporters to submit transcripts to the superior court and the superior court to submit them to the Court of Appeal. Because court reporters are not “filers” within the meaning of this proposed rule, these provisions would not apply to them.</p>
Orange County Bar Association Newport Beach by Lei Lei Wang Ekvall President	<p>Rule 8.76(a)(3) requires that each electronic filer “[t]ake all reasonable steps” to ensure that its filings are virus-free. While one assumes this subdivision was left vague so as not to delve into the minutiae of virus protection or individual software programs (Norton. McAfee, etc.), if the rules are going to require “reasonable steps” for file safety there should be some guidance as to whether e-filers are required to run some type of virus-scan on each delivered file.</p>	<p>The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.76(b). Format of documents to be filed electronically**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Court Reporters Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	<p>Rule 8.71(2) defines a document to include a reporter’s transcript. Then rule 8.76 (b) states, “A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:</p> <p align="center">(1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.”</p> <p>CCRA’s concern is that it is not clear whether this software will necessitate the purchase of additional software, which would impose an additional financial burden on the individual court reporter, whether pro tem or official. In light of the fact that transcript rates have not increased in over 20 years, this is an onerous burden to place on the reporter.</p> <p>CCRA respectfully submits that the proposal should be modified so that it is clear that the court reporter is:</p> <p>1. Not financially responsible to purchase whatever software the project requires;</p>	<p>Under the existing appellate rules, court reporters are not required to file reporter’s transcripts with the Court of Appeal. Rules 8.130 and 8.336 require court reporters to submit transcripts to the superior court and the superior court to submit them to the Court of Appeal. Because court reporters are not “filers” within the meaning of this proposed rule, these provisions would not apply to them.</p>
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<p><b>Required Formats:</b>            Proposed rule 8.76(b) authorizes the court to specify the format of electronically filed documents. (8:1-15.) The Committee infers that this concerns the selection of an electronic file format, such as portable document format</p>	<p>As the commentator surmises, the intent of rule 8.76 is to authorize the court to specify the electronic file format for documents that are e-filed. The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.76(b). Format of documents to be filed electronically**

Commentator	Comment	Committee Response
	<p>(pdf).</p> <p>While the Committee assumes that it is not necessary to add further explicit limitations on format, the Committee believes this rule should not authorize the court to <i>mandate</i> the inclusion of hyperlinks in filed documents or to <i>require</i> that documents be submitted on discs. The Second Appellate District currently has a voluntary program by which the parties may agree to submit discs containing electronic copies of briefs with cited authorities and record excerpts, including hyperlinks in the briefs to the cited authorities and record excerpts. The process of preparing such electronic materials is time-consuming and costly, with the preparation typically provided by services that charge roughly \$5,000 to \$10,000 per brief. The court should not be authorized to mandate the preparation of such materials as part of the electronic filing program.</p>	<p>interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p>
<p>Michael D. Schwartz Special Assistant District Attorney Office of the District Attorney Ventura</p>	<p>The proposed rules leave it up to the court to determine the format. I hope that a PDF format such as Adobe Acrobat is an available option. In my practice in the Court of Appeal, a “document” such as a brief or writ petition or answer may actually consist of several computer documents such as the cover, tables, body, proof of service, exhibits, etc. The PDF format allows several such “documents” to be combined into one document for scanning and transmission.</p>	<p>See response to the comments of the Committee on Appellate Courts of the State Bar of California, above.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.77. Requirements for signatures on documents**

Commentator	Comment	Proposed Committee Response
Committee on Administration of Justice State Bar of California	<p><b>Rule 8.77 – “Requirements for signatures on documents”</b>            Subdivision (c) covers documents that opposing parties must sign. The rule requires the party filing a document to get the opposing party’s original signature before filing the document. The time and possible expense of gathering <i>original</i> signatures before filing a document seems to defeat the point of e-filing, which is to reduce costs and increase efficiency. CAJ suggests the rule be amended to allow the filing party to gather and maintain printed signature pages (such as faxed or scanned signature pages) in lieu of original signature pages.</p>	<p>The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p>
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<p><b>Reliance on Copies for Stipulation Signatures:</b></p> <ul style="list-style-type: none"> <li>In rule 8.77(c), after the proposed text that reads “When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties,” delete the remainder (including (c)(1), (2), and (3)) and replace with the following: “the party filing the document must have and maintain either (1) the original signature on behalf of the opposing party on a printed form of the document or (2) an electronic copy of the document bearing the signature on behalf of the opposing party, transmitted by the opposing party or the opposing party’s attorney to the party filing the document.” (9:6-21.)</li> </ul> <p>As drafted, proposed rule 8.77(c) would require that a party filing a document bearing the signature of an opposing party first obtain custody of the opposing party’s original signature and then maintain that original document for</p>	<p>See the response to the comments of the Committee on the Administration of Justice above.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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**Rule 8.77. Requirements for signatures on documents**

Commentator	Comment	Proposed Committee Response
	<p>inspection and copying on demand. This is an unnecessary and time-consuming requirement that would defeat the practical benefits of electronic filing and service. (In appellate practice, parties frequently stipulate to extend time for filing briefs, which can sometimes be time-sensitive.) The erroneous—or even fraudulent—submission of an opposing party’s purported signature on a stipulation or similar document is highly unlikely but readily cured by the opposing party’s raising an objection with the court. Electronic filing should result in immediate service on—and ready identification by—the opposing party of any erroneously presented stipulation or similar document.</p>	
<p>Michael D. Schwartz Special Assistant District Attorney Office of the District Attorney Ventura</p>	<p>Finally, as to proposed rule 8.77(a)(2), I do not believe the “certification” that a document has been signed under penalty of perjury is sufficient protection. I am particularly concerned with a pro per litigant obtaining a stay or other relief based on an unsigned declaration by the litigant or by a purported witness. No sanction is provided for a false “certification,” and the punishments for perjury would not apply. I suggest that the rule require that the document, with signature, be scanned and transmitted to the court, and that the scanned version be deemed to be within the perjury statute.</p>	<p>The committee has revised its proposal to require that the original, signed verification page or page of a document signed under penalty of perjury be filed with the court within 5 days after the document is filed electronically.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.78. Payment of filing fees</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Orange County Bar Association Newport Beach by Lei Lei Wang Ekvall President	3) Rule 8.78(b) should specify whether fee waiver provisions apply to the administrative fees contemplated by proposed rule 8.75(b).	A fee charged by an electronic filing service provider under proposed rule 8.75(b) is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26. The committee has revised the proposal to add an advisory committee comment to rule 8.78(b) clarifying this.

<b>Rule 8.79(d). Delayed delivery</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	Under proposed rule 8. 79(d) regarding “Delayed Delivery,” we also suggest clarifying the mechanism by which an electronic filer may “demonstrate[] that he or she attempted to electronically file the document on that day.” As proposed, the rule does not provide for submission of a declaration or other method to make this showing, or specify what evidence will be considered.	The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.

<b>Rule 8.80. Electronic service</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Committee on Appellate Courts State Bar of California by T. Peter Pierce	<b>Service on Courts and Public Agencies:</b> In cases with e-service, the Committee raises the question of how copies of briefs should be served on trial court judges, the Supreme Court, or (where applicable) the Attorney	In response to this comment, the committee has modified its proposal to clarify that, unless otherwise provided by law or court order, copies of documents required to be served on nonparties, such as trial court

**W10-04**

**Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.80. Electronic service</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>General.</p> <p>Where briefs are being e-filed, it would be useful to specify that any paper copies served on trial court judges, the Supreme Court, or (where applicable) the Attorney General need not have colored or cardstock covers and need not be side-bound.</p> <p><b>Proofs of E-Service:</b></p> <ul style="list-style-type: none"> <li>In rule 8.80(f)(1)(B), delete “and time” from the proof of service requirement. (13:12-13.) (Alternatively, if 11:59 p.m. is not the e-filing and service deadline, replace with “and whether before or after close of business [__:__ p.m.]”)</li> </ul> <p>As drafted, proposed rule 8.80(f)(1)(B) would require a party to anticipate and state the exact time of electronic service before such service actually occurs and is confirmed by the electronic filing service provider. In practice, one cannot guess the service time when preparing a document that must thereafter be reformatted and then uploaded through the electronic filing process. There would be no need to recite any time if the e-filing &amp; e-service deadline is set at 11:59 p.m.</p> <ul style="list-style-type: none"> <li>In rule 8.80(f)(1)(C), after “person served,” insert “or,</li> </ul>	<p>judges and the Attorney General, may not be served electronically. Note that rule 8.212 already permits electronic service of a copy of briefs in civil cases on the Supreme Court.</p> <p>The issue raised by the commentator arises under the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p> <p>The language of concern to the commentator appears in the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.80. Electronic service</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>that the person(s) named are being served electronically through the electronic filing service provider appointed by the court, . . . .” (13:15-16.)</p> <p>As drafted, proposed rule 8.80(f)(1)(C) requires that a proof of service state the “electronic notification address of the person served, . . . .” However, with a typical electronic filing service provider system, electronic service of e-filed documents is not accomplished by parties’ e-mailing electronic copies of documents to each other. Rather, service is accomplished by the electronic filing service provider appointed by the court. The system operated by the electronic filing service provider automatically transmits to other parties the electronic document file when it is submitted electronically for filing. There is no need to require that each party maintain and state the current e-mail service addresses of all other parties. This would be particularly burdensome in cases with large numbers of parties.</p> <ul style="list-style-type: none"> <li>• One member of the Committee also recommends that rule 8.80(f)(1)(D) be modified to replace “was” served electronically with “is being” served electronically. (13:18-20.)</li> </ul> <p>As drafted, proposed rule 8.80(f)(1)(D) requires that a proof of service attest that electronic service has already occurred. However, it is often the case with an electronic filing service provider system that the signed “proof of service” page is prepared before the electronic service occurs in fact.</p>	

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

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<b>Rule 8.80. Electronic service</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Service occurs when the system automatically transmits to other parties the electronic document file that is submitted electronically for filing. Typically, electronic filing systems generate records reflecting that electronic service has occurred. It would be unnecessary, burdensome, and impractical to require that every party e-filing a document also electronically file a separate proof of service after the electronic service of the main document has already been completed—so as to attest that the document “was” served.</p>	
<p>Jay M. Kohorn Assistant Director California Appellate Project Los Angeles</p>	<p>(3) Rule 8.71 (6) “Electronic service.”</p> <p>As a practical matter in the appellate court, one of the best methods of service, and one that should be within the purview of testing by the pilot project, is where the completed electronic document is stored at a website, and the court as well as the intended service recipients, will be notified electronically so that they may go to that website to download the document.</p> <p>The “filing” date could still be when the document is retrieved by the court, but the filing should be deemed timely if the notification has been made electronically to the authorized email address on or before the due date. That parallels California Rules of Court, rule 8.25(b)(3) on service by mail.</p>	<p>The issue raised by the commentator arises under the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.</p>

**W10-04****Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District** (adopt Cal. Rules of Court, rules 8.70–8.80)

All comments are verbatim unless indicated by an asterisk (\*).

<b>Other</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	While the proposed rules do not appear to require filing or service of any paper copies (as contrasted with e-briefing programs currently in place in certain Courts of Appeal), if the pilot program is indeed intended to be a true e-filing and service system, we suggest clarifying (perhaps in an Advisory Committee Comment) that no paper copies are required to be filed when e-filing is in place under the new rules.	The issue raised by the commentator arises under the trial court e-filing rules as well as these proposed rules. In the interest of maintaining consistency between the two sets of rules, the committee will consider whether changes to both sets of rules might be appropriate as part of a later proposal.
California Court Reporters Association Redding by Tomas E. Pringle, Chair Judicial Procedure Committee	If it is the intent that transcripts on appeal will be filed through the local appellate court clerk, we suggest it be specifically stated in the proposal. Finally, it might be helpful if a few of the reporters in the Second District were involved in this project. If it hasn't already happened, CCRA would be happy to assist in locating reporters willing to participate in this pilot project.	The committee and the Second District appreciate the California Court Reporters Association's offer to assist with this pilot project.  Under the existing appellate rules, court reporters are not required to file reporter's transcripts with the Court of Appeal. Rules 8.130 and 8.336 require court reporters to submit transcripts to the superior court and the superior court to submit them to the Court of Appeal. These proposed rules would not change the existing provisions relating to reporter's submission of transcripts to the superior court.